

Application No. 09/681,441
Amendment dated May 4, 2004
Reply to Office Action of February 5, 2004

REMARKS

Pursuant to the above-noted Office Action, the Examiner criticized the specification for listing a reference in a manner noncompliant with 37 C.F.R. § 1.98(b). New Figure 3 was disapproved. The original drawings are objected to as failing to depict with a reference character the "cab" and the "telescoping member." The drawings were further criticized for not depicting the telescopic member or the cab. Various objections were presented under 35 U.S.C. § 112 with respect to asserted informalities in the claim language. Claims 1-3, 5, 8-12, 14, 16, and 17 were rejected under 35 U.S.C. § 102(b) given the Bayer reference. Claims 1, 2, 5, 6, 8, 10, 14, and 16-20 were rejected under 35 U.S.C. § 102(e) given Wolpert. Claims 13 and 15 were rejected under 35 U.S.C. § 103(a) given Bayer. Claim 15 was rejected under 35 U.S.C. § 103(a) given Wolpert. The Applicant respectfully traverses these rejections and requests reconsideration.

The Examiner has criticized the specification as listing a reference in a manner that is not compliant with 37 C.F.R. § 1.98(b). The specification makes reference to Swedish Patent Application Number SE 9800420. The Applicant respectfully notes that an Information Disclosure Statement in a form compliant with 37 C.F.R. § 1.98(b) was submitted on January 13, 2004. This Information Disclosure Statement included a listing of this specific reference and further included a copy of that reference. A postcard receipt dated January 16, 2004 was received from the Patent and Trademark Office indicating receipt of this Information Disclosure Statement. The Applicant therefore respectfully submits that the reference in question has been properly submitted for consideration by the Examiner.

The Examiner contends that the Applicant's newly submitted Figure 3 inappropriately introduces new matter. The Examiner therefore refuses to accept

submission of this Figure. This, in turn, leads in part to a continuance of certain rejections of the claims. Though the Applicant disagrees with the Examiner's conclusion in this regard, in the interest of moving forward, the Applicant submits a proposal for a revision to Figure 3. As shown in the attached sheet, prior Figure 3 is deleted and a new Figure 3, comprising a schematic block diagram, is substituted therefor. This block diagram depicts, logically and schematically, the lever 11 and the pedal arm 2. A telescoping element 16 is shown in a coupling relation with these two above-mentioned elements. Such a block diagram is utterly consistent with the description of the specification which reads:

"Within the scope of the invention, it is also conceivable to have, instead of a flexible element such as a steel cable, a rigid telescoping element 16 that is pivotally joined to the respective arms at both ends. Both parts of the element can be pushed together when they are subjected to a compressive force. Here however, the advantages of the rigid fixation are lost."

The Applicant does not claim to have invented the concept of pivotally joining one element to another. Pivoting connections are, in fact, a well established coupling technique as is well understood by the average skilled practitioner. Furthermore, the existing figures are, as specified in the specification, schematic in nature. That is, they deliver a sense of the concept sufficient to allow one of average skill in the art to make and practice the invention without necessarily representing an appropriately scaled and exactly workable embodiment for a given vehicle. Such treatment is well within the bounds of accepted practice and in fact serves to better highlight an invention as versus obscure it with detail and minutia that will often prove useless in a specific embodiment as practiced by another.

The Applicant was in possession of the invention at the time of filing the application in question. The text of the specification clearly supports this conclusion. Figure 3 simply serves to facilitate a meeting of the requirement that an apparatus

element as presented in a claim be depicted in a drawing. The block diagram representation of revised Figure 3 serves this purpose. The Applicant therefore respectfully submits that new Figure 3, which introduces no new matter whatsoever, provides adequate support for the claim language in question.

The Examiner has also expressed concern that some of the claims make reference to a "cab" without depicting that cab in the drawings. The specification, in fact, makes specific reference to a "cab space" as is separated from an engine compartment by a cowl wall. By this amendment, the Applicant has used new reference numeral "20" to identify this cab space. The Applicant has also made amendments to claims 1, 8, and 18 to change the prior references to "cab" and "vehicle" to "vehicle cab space" or "cab space." The claims are now utterly consistent with the specification in this regard and the specification in turn is consistent with the drawings. No new matter has been introduced.

Claims 1-3, 5, 8-12, 14, 16, and 17 were rejected under 35 U.S.C. § 102(b) given Bayer. The Examiner argues that the drawings do not show the "cab" and therefore interprets the cab as being the vehicle shown in Figure 1 of Bayer. From there, the Examiner argues that all of the elements of the claim are within the vehicle (and hence the "cab"), thus meeting the recitations of the claims. The Examiner's argument, however tenable or untenable it might be, has been mooted by the Applicant's modification of the claims. Independent claims 1, 8, and 18 all now make specific reference to the vehicle cab space as versus merely a vehicle cab. As noted above, the cab space is clearly denoted both by the text of the specification and by the drawings. As noted earlier by the Applicant, Bayer teaches one skilled in the art only that a wire can be utilized to couple a brake pedal arm and actuator arm that reside on different sides of a vehicle cab wall and that are separated by a considerable distance. Conversely, the Applicant addresses a concern that arises when these

various mechanisms are in relatively close proximity to one another and are both found within the vehicle cab space. Bayer's teachings are not applicable to such a context without reliance upon a degree of creativity that renders an extrapolation of Bayer's teachings nonobvious. For example, claim 1's explicit reference to "a motion-transmitting element disposed wholly within the cab space," is neither taught by nor fairly suggested by Bayer. Similar requirements mark independent claims 8 and 18. The Applicant therefore respectfully submits that these claims are not anticipated by the Bayer reference.

Claims 1, 2, 5, 6, 8, 10, 14, and 16-20 are rejected under 35 U.S.C. § 102(e) given Wolpert. The Examiner relies here upon a notion that a particular rod in the Wolpert reference, when subjected to sufficient compressive force, will inherently shorten. The Applicant does not dispute this characterization of Wolpert's rod. The Applicant overcame this objection, however, by modifying the independent claims to specify that the Applicant's corresponding element is "non-fixedly shortened when there is compressive force on the element." That is, the shortening of the element in response to application of compressive force results in a nonpermanent shortening of the element; i.e., a shortening that is not fixed. The Examiner, however, argues that this does not successfully distinguish over Wolpert. The Examiner argues that Wolpert's Figures 1 and 2 "plainly show that the rod 14 is moved as seen by the phantom or broken line position of the rod 14 or the pedal 8. Therefore, Wolpert's rod is transparently non-fixed, i.e., *axially displaced* as expressly described in line 28 et seq., (column 4)." The Applicant has not modified the claims, however, to aver such a position regarding axial displacement. The Examiner's point, therefore, misses the point. The Applicant has modified the claims to make clear that the shortening of the motion-transmitting element is shortened in a non-fixed manner in response to compressive force. To the extent that Wolpert's rod

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is shortened by compression, the change is essentially permanent. This result does not change regardless of whether Wolpert's rod undergoes axial displacement, as such axial displacement is irrelevant to the shortening of the rod in question. The Applicant therefore respectfully submits that these claims are allowable over Wolpert.

The remaining claims are ultimately dependent upon one of these independent claims, which claims have been shown allowable above. In addition, these claims introduce additional subject matter that, particularly when considered in context with the claims from which they depend, introduces incremental patentable subject matter. For all these reasons, the Applicant respectfully submits that these dependent claims may be passed to allowance.

There being no other objections to or rejections of the claims, the Applicant respectfully submits that claims 1-3, 5, 6, and 8-20 may be passed to allowance.

Respectfully submitted,

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Appendix